

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO: 09-20542

v.

DISTRICT JUDGE THOMAS L. LUDINGTON
MAGISTRATE JUDGE CHARLES E. BINDER

DAVID MERRILL,

Defendant.

**MAGISTRATE JUDGE’S REPORT, FINDINGS AND
RECOMMENDATION CONCERNING PLEA OF GUILTY**

I. REPORT AND FINDINGS

On November 17, 2009, the case was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B) and 636(b)(3) for purposes of receiving, on consent of the parties, Defendant’s offer of a plea of guilty, pursuant to a Rule 11 Plea Agreement. The Defendant, along with counsel, appeared before me on December 8, 2009. In open court I examined the Defendant under oath, confirmed the Defendant’s consent, and then advised and questioned the Defendant regarding each of the inquiries prescribed by Rule 11(b) of the FEDERAL RULES OF CRIMINAL PROCEDURE. Based upon the Defendant’s answers and demeanor, **I HEREBY FIND** 1) that the Defendant is competent to tender a plea, 2) that Defendant’s plea was knowingly, intelligently made, and 3) that the offense(s) to which he pled are supported by an independent basis in fact containing each of the essential elements of the offense(s). Therefore, I have ordered the preparation of a presentence investigation report.

II. RECOMMENDATION

For the reasons set forth above, **IT IS RECOMMENDED** that subject to the Court's consideration of the plea agreement pursuant to Rule 11(c) of the FEDERAL RULES OF CRIMINAL PROCEDURE, the Defendant be adjudged guilty and have sentence imposed.

III. REVIEW

Pursuant to Rule 72(b)(2) of the Federal Rules of Civil Procedure, "[w]ithin 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy." Fed. R. Civ. P. 72(b)(2). *See also* 28 U.S.C. § 636(b)(1). The response shall be concise, but commensurate in detail with the objections, and shall address specifically, and in the same order raised, each issue contained within the objections.

Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596 (6th Cir. 2006); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *McClanahan*, 474 F.3d at 837; *Frontier Ins. Co.*, 454 F.3d at 596-97.

s/ Charles E. Binder

CHARLES E. BINDER
United States Magistrate Judge

Dated: December 9, 2009

CERTIFICATION

I hereby certify that this Report and Recommendation was electronically filed this date, electronically served on Roy Kranz and C. Michael Gorte, and served on Pretrial Services and District Judge Ludington in the traditional manner.

Date: December 9, 2009

By s/Jean L. Broucek
Case Manager to Magistrate Judge Binder